

DHL
9/26/84

FROM: Robert Leininger
TO: Robert Schaefer, David Ulrich, Mary Gade
RE: Reilly Tan

I would like to bring you up to date on the status of the Reilly Tan case. As you know, this case has been in litigation for some time. Federal and state discovery is essentially completed (except for discovery of expert witnesses). We have gotten summary judgment on all of their offensive defenses except for laches and constitutionality.

Settlement discussions which took place last January and February were terminated after Reilly was unable to get major concessions on post government costs, contingencies, etc. In July, Reilly submitted a settlement offer which, essentially provided that the company would pay all capital costs and the City of St. Louis Park would pay for operation and maintenance. The City refused to accept the full responsibility that Reilly was placing upon it, so Reilly's offer could not be accepted.

Administrative Order

On August, 1984 an Administrative Order (AO) was

issued to Reilly Ton. The AO, essentially, called for Reilly Ton to design, construct, operate and maintain a granular activated carbon treatment system for the City of St. Louis Park. On September 11, Reilly Ton, represented by its president, vice-president and general counsel met with federal state and city representatives in Chicago. The purpose of the meeting was to provide Reilly with an opportunity to inquire as to the basis for the Order and to discuss whether it would be complied with.

Reilly stated that it would be willing to implement a treatment system very similar to the one required by the Order, but not identical. We stated that their proposal would be acceptable if they would meet the performance criteria set forth in the Order. They said that their system would meet such performance criteria but that the criterion of 2.8 parts per trillion for total carcinogenic PAH could not be accurately measured on a consistent basis. We then agreed that a higher, more accurate, level may be appropriate as long as the system, by design, would meet the performance criteria. I then explained that the effective date of the Order was September 14, and that we had to have a written commitment by then from Reilly.

On September 14, I received a written commitment from Reilly Tan that they would implement the drinking water treatment system with the following four conditions:

- 1) Reilly would remain liable for O&M but would have to have a written commitment from its contractor (Calgon) and the City, that they would take O&M after five years.
- 2) Reilly wants this in the form of a consent decree which would be signed by the U.S., the State and the City and relieve Reilly from all drinking water treatment.
- 3) Reilly retains its right to seek reimbursement from the U.S. and the State if the court finds that the system is unnecessary.
- 4) An accurate performance criterion for total carcinogenic PAH can be agreed upon.

On September 21 I wrote a response to Reilly Tan which stated that, if the details of their proposed system and the contingencies could be worked out, their system would be acceptable.

Also, 1) they could contract with an acceptable 3rd party to do O&M as long as Reilly remained liable 2) a written document, signed by all parties could be executed which would relieve Reilly from

- responsibility for drinking water treatment at well # SLP 15 in St. Louis Park for PAH's.
- 3) Reilly Tax would have no right to reimbursement from the U.S. or the State, and
 - 4) an acceptable criteria for total carcinogenic PAH could be worked out.

Paul Bitter is reviewing Reilly's submittal and is preparing his technical comments. I will submit this to Reilly after they are prepared and propose that we meet during the first two weeks of October in order to resolve this matter by a partial consent decree to be entered in the district of Minnesota.

Pre-trial Conference

On September 19 the parties met in the chambers of Judge Magnuson pursuant to a pre-trial conference. All parties agreed that a bifurcation of the case would be appropriate and the Court was favorable disposed to the idea as well. Judge Magnuson suggested leaving the damages and liability portion of the case next Spring and the remedial portion (~~proposed~~ in the next fall (natural resource damages, costs, claims of intervenors, etc.)) Reilly has been involved with the depositions of dozens of state employees to try to obtain favorable evidence that would show that

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the Hold Harmless Agreement, entered into by the City, can be attributed to the State as well. During the course of such depositions, myriad objections and challenges have been raised. Consequently, Judge Magnuson said he will appoint a Special Master for this case. He hasn't finally decided who it will be, but indicated it will probably be a former Minnesota Supreme Court Justice. Our next pre-trial conference is set for November 8.

Status of Negotiations

We have tentatively scheduled negotiations with Reilly Tax for Tuesday and Wednesday, October 2 and 3. I will be going to Minnesota the day before to discuss our strategy with my counterparts. The most important aspect of the negotiations will be to make significant progress in resolving the scope of the case which is covered by the Order. On Wednesday we will see whether the parties can make any progress in resolving the rest of the case.